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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/722,950 | 11/25/2003 | Russell Alan Parker | 10030712-1 | 9616 |

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EXAMINER

PADGETT, MARIANNE L

ART UNIT PAPER NUMBER

1762

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/722,950

Applicant(s)

PARKER ET AL.

Examiner

Marianne L. Padgett

Art Unit

1762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 18, 27-29, 53, 55, 57 and 59-62.
Claim(s) withdrawn from consideration: (Options (1) & (2) of claim 1).

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No.(s) _____.
13. ☐ Other: _____.


MARIANNE PADGETT
PRIMARY EXAMINER

Continuation of 3. NOTE:

Changing the method from treating a backing element/gasket to forming "an array assay chamber" changes the scope of independent claims 53 & 1, creating new issues therein, especially with respect claim 1, which alternatively claims 2 unexamined species, such that previous discussion of the method of using a gasket (claim 57, proposed amendment provides you clarification up when plasma must be performed), would not have adequately covered all new issues raised by the proposed amendment.

Continuation of 5. Applicant's reply has overcome the following rejection(s):

Applicants showing of assignment to the same assignee (i.e. common ownership) at the time of the invention of the present application and the publication to Schleifer (2003/0231985 A1) removes this reference as prior art, hence removes the rejection thereover, which was set forth in section 8 of the 9/7/2006 rejection.

Continuation of 11. does NOT place the application in condition for allowance because:

New issues raised by the proposed amendment require further consideration, especially as all the claims are now directed towards a more comprehensive process, i.e. both assembling an array of assay chamber & the treating of the gasket used for sealing it (independent claims 1, 53 & 57 directed to elected species of nondepositional plasma treatment of gasket; and claim 1 also directed to 2 alternative unexamined species, where no generic claims are any longer present, hence can never be found allowable, so as to require examination of unelected species), with all the claims proposed amendments more clearly delineating the sequences of the plasma treatment, then joining to form the array assay chamber.

Note that the presence of unelected species in claim 1 (see 11/2/2005 action, section 1 & applicants' response of 8/18/2005 for election information), means that even if the examiner agreed with applicants that plasma treatment of generic gasket material used for sealing generic chamber materials produced an unobvious process, merely by calling the microarray, an addressable assay array & forming the chamber (which she doesn't, for reasons previously stated in the rejection, as there are no necessarily different considerations for the sealing effects of the unspecified gasket material with respect to the unspecified structural material for sealing unspecified reagents depending on whether one is doing an unspecified assay or an unspecified titration or an unspecified whatever), the claims could not be considered in condition for allowance, as two thirds of the subject matter of independent claim 1, plus those claims dependent therefrom, which are not necessarily directed to plasma (which incidentally is never positively selected as the treatment in any of dependent claims 18, 27-29) are essentially withdrawn from consideration. Putting not elected subject matter as alternatives to elected subject matter in an independent claim, does not get the nonelected subject matter examined, hence the presence of such nonelected subject matter, besides creating new issues with the amendments, will insure that the claims are not in condition for allowance.

It remains noted that while the claim language, which might be considered to imply a single undivided or unitary assay chamber, the claim language does not necessarily require such, as a multizoned chamber having plural subchambers or separated zones within the overall chamber, could still be called "an array assay chamber", thus the claims do not distinguish from any of the references or reference combinations applied or require different rejections, based on the location of the gasket seal with respect to locations on the MicroArray substrate.

Applicant's analysis of Audino et al. is not commensurate in scope with applicants actual claim language, since what effect the plasma treatment has on the gasket, i.e. sealing material, is not specified, nor is the structure of "the gasket" specified, but it is clearly not required to include all structural parts of the final sealing element, which could also be given the nomenclature "a gasket", hence material used for sealing as described in [0020-21], where the corona process is described at the end of [0028], teaching polypropylene film or other compatible material corona treated, so as to polymerize material, such as polybutadiene, thereon forming a crosslink elastomer, is a plasma treatment within the scope of applicants' very broad claim language, which encompasses this and all types of plasma contacting material to be used for sealing or gasket structures, especially considering the unexamined alternatives that applicants clearly include depositing on the gasket to be a form of treating, such that the exemplary polypropylene film or other compatible material used for sealing the polypropylene plates, may be considered to read on applicants claimed "gasket", with the corona treatment to form a polymerized crosslinked elastomer surface reading on the claim of treating by plasma contacting for the completely generic plasma of unspecified affect. If applicants leave the language broad enough to encompass many different effects, applicants must expect any of those effects to be applied to the claims, such that attempts to exclude one effect without actually requiring it to be excluded by the claim language chosen, fails to be convincing.

With respect to applicant's allegation of applied art not being analogous art, applicants have failed to show that the effect of analogous gasket materials & analogous structural materials cannot have analogous sealing considerations in varied enduses. In other words, applicants has failed to show that only the specific enduse, not the specific materials are involved, is important for the effects of the gasket's ability to seal, as applicants analysis appear to be contending that what treatments would be desirable too employed on a gasket or gasket material is dependent on the enduse regardless of the materials employed. As the examiner finds this unconvincing, applicants analysis of what is and is not analogous art is highly unconvincing. Applicant should note that there is rarely only one concept in any set of claims, that is capable of supplying analogous art & and that the broader the claim language employed, in general the broader or more varied are the concepts that may be considered analogous.

It is further noted, particularly for the independent claims which are directed towards generic gasket material employed with generic substrate material in forming a chamber of unspecified materials, that application of plasma to unspecified gasket material to create no particular affect has absolutely no unobvious significance, especially considering that use of plasma as a standard cleaning is conventionally employed across all lamination encoding arts for the expected effect of improving adhesive properties, where it is an old and well-known procedure to pick your plasma cleaning/treating gases dependent on the particular material being treated & the composition of the material to which the plasma treated material is required to adhere. While this is not necessarily what applicants are intending to do, their claims encompass such an old and well-known general standard practice, especially considering that any one of minimal competence would be aware that dirty gasket material would be unable to form an acceptable seal. As the claims presently stand, since we have no idea what the gasket material is made out of, and there is no definite or necessary effect of the generic plasma on the gasket, hence there is no necessary or definable affect on the seal-the seal formed on joining the backing element to the array substrate. In effect applicants' claims as written solve no problems, they have no structure that has any observable significance with respect to the treatment claimed, etc..